

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOHN ANDREW MUDLOCK,	)	
	)	
Petitioner,	)	
	)	1:21CV41
v.	)	1:10CR115-1
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

This matter is before the court for review of the Recommendation filed on January 28, 2021, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 60.) In the Recommendation, the Magistrate Judge recommends that this action be filed and dismissed sua sponte without prejudice to Petitioner promptly filing a corrected motion on the proper § 2255 forms. (Id. at 2.) The Recommendation was served on the parties to this action on January 28, 2021, (Doc. 61), and Petitioner filed timely objections and supplemental objections to the Recommendation, (Docs. 62, 64).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations

made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions.” Id.

In his objection, Petitioner clarifies that he is in custody for a 2019 conviction and that he is not in custody for the 2010 conviction. (Doc. 62.) However, Petitioner further clarifies that it is the 2010 conviction that he presently seeks to challenge under Rehaif v. United States, 588 U.S. \_\_\_\_, 139 S. Ct. 2191 (2019). (Id.) Apparently recognizing the issue with a § 2255 petition challenging a 2010 conviction for which he is no longer in custody, Petitioner now requests that this court construe his letter as a writ of coram nobis. (Doc. 64.) In fact, the letter has been construed as a petition for a writ of coram nobis and is proceeding upon the docket in a separate case. (See 1:20CV1136 Text Order 2/24/2021.)

This court has appropriately reviewed the portions of the Recommendation to which objection was made and has made a de novo determination in accord with the Magistrate Judge’s Recommendation. This court therefore adopts the Recommendation.

**IT IS THEREFORE ORDERED** that the Magistrate Judge’s Recommendation, (Doc. 60), is **ADOPTED. IT IS FURTHER ORDERED** that Petitioner’s letter, (Doc. 59), is construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, and that this action be, and is hereby, dismissed

without prejudice to Petitioner pursuing his pending petition for a writ of coram nobis in case number 1:20CV1136.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 6th day of April, 2021.

  
United States District Judge